

II. SUBDIVISION ADMINISTRATION

A. Schedule of Fees

The schedule of fees shall be posted in the county planning department. No action shall be taken on applications or appeals until all application fees have been paid in full. Applications for subdivision review shall not be accepted unless accompanied by all applicable fees.

B. Variance

1. Hardship

The governing body may grant a variance from the design and improvement standards in these regulations when strict compliance would result in undue hardship, and when it is not essential to the public welfare. Such a variance shall not have the effect of nullifying the intent and purpose of these regulations. The governing body may not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA. The governing body shall not approve a variance unless it makes findings based upon the evidence in each specific case that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties;
- b. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if these regulations were enforced;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations or applicable, adopted plans.
- e. Innovative designs that address energy conservation, transportation efficiency, affordable housing, ADA accessibility, or preservation of the natural environment which do not circumvent the purpose of these regulations may be reasons for granting of a variance by the governing body. Costs or financial considerations are not a valid

reason for granting a variance, nor are hardships that are self-imposed.

2. Procedure

The subdivider shall include with the submission of the application, a written statement describing any requested variance and the facts of hardship upon which the request for the variance is based. The Planning Board shall make a recommendation, and the governing body will act upon each requested variance at the public meeting or hearing on the preliminary plat of a major subdivision. In the case of all minor subdivisions, the governing body shall consider each requested variance at the public meeting on the preliminary plat or site plan.

3. Conditions

In granting variances, the governing body may impose conditions that will, in its judgment, substantially secure the objectives of these regulations.

4. Statement of Facts

When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing each variance and the facts and conditions upon which it is based.

C. Amendment of Regulations

Before the governing body amends these regulations it shall seek recommendation from the Planning Board and hold a public hearing. It shall give public notice of its intent to amend these regulations and of the public hearing by publishing notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 calendar nor more than 30 calendar days prior to the date of the hearing.

D. Enforcement, Violation and Penalties, Remedies

1. Enforcement

- a. Every final subdivision plat must be filed for record with the County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner (except as noted in Chapter III, section B.15, and Chapter IV, sections C.7 and E.7 of these regulations). Subdivisions created by rent, lease or other conveyance must have received final approval and be filed in the planning office prior to transfer or

occupancy in any manner.

- b. The Director of Community Development and Planning (or his or her designee) shall serve as the designated agent of the governing body for the jurisdictional area. The Director shall have the authority to administer, interpret, and enforce the Montana Subdivision and Platting Act and these regulations. Decisions of the Director will be in writing, and may be appealed to the governing body within 15 working days following the decision.
- c. The County Attorney may commence action to enjoin any unlawful action or compel compliance with all provisions of the Montana Subdivision and Platting Act and these regulations.

2. Violations and Penalties

As detailed in Section 76-3-105, MCA, any person, firm, corporation, or other entity that violates any of the provisions of the Montana Subdivision and Platting Act or these regulations shall be guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment in jail for not more than three months, or by both fine and imprisonment. Each sale, lease, or transfer--or offer of sale, lease, or transfer--of each separate parcel of land in violation of any provision of the Montana Subdivision and Platting Act, or these regulations, shall be deemed a separate and distinct offense.

3. Remedies

The governing body may not deny or condition a subdivision approval unless it provides a written statement to the applicant detailing the circumstances of the subdivision denial or condition impositions. The statement must include:

- 1) information regarding the appeal process for the denial or imposition of conditions;
- 2) identification of the regulations and statutes used in reaching the governing body's decision and explanation of how they apply to the decision to deny or impose conditions;
- 3) the facts and conclusions that the governing body relied upon in making its decision to deny or impose condition and reference documents, testimony, or other materials that form the basis of the decision, and;

- 4) the conditions that apply to the preliminary plat approval and that must be satisfied before final plat may be approved.

A party, who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal the decision to the district court. The petition to the court must specify the grounds upon which the appeal is made.

The following parties may appeal the decision of the governing body only if aggrieved:

- a. the subdivider;
- b. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county, if that landowner can show a likelihood of material injury to the landowner's property or its value;
- c. the county commissioners of the county where the subdivision is proposed; and
- d.
 - (i) a first-class municipality, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 3 miles of its limits;
 - (ii) a second-class municipality, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 2 miles of its limits; and
 - (iii) a third-class municipality or a town, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 1 mile of its limits.

A person, who has filed with the governing body an application for a subdivision under this chapter, may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

For the purpose of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specifically and injuriously affected by the decision.

E. Restrictive Covenants

The County may not approve a subdivision proposal that violates restrictive covenants or deed restrictions governing use of the affected property, unless the covenants are amended prior to or as part of the approval process. Any change to restrictive covenants must follow the procedures outlined in the specific covenants in question. This provision pertains to both covenants put in place by the County, as well as those held by the private landowners. The property owner is responsible for supplying private covenants to the County with the preliminary plat application.